

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE: BAIR HUGGER FORCED AIR  
WARMING DEVICES PRODUCTS  
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

THIS DOCUMENT RELATES TO:

Wilma Fraley (0:16-cv-02755-JNE-FLN)  
Steven Wilburn (0:16-cv-02772-JNE-FLN)  
Leroy DePriest (0:16-cv-03383-JNE-FLN)

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

COMES NOW Plaintiffs for the above-captioned actions to hereby oppose the motion to dismiss of Defendant 3M Company and Defendant Arizant Healthcare, Inc. ("Defendants" collectively). The motion to dismiss and accompanying brief in support are Docs. 424 and 425 ("Motion" collectively).

Defendants have asked the Court to dismiss these actions with prejudice for failure to comply with the Court's Pretrial Order No. 14 ("PTO 14"), which requires a plaintiff to serve a completed and signed Plaintiff Fact Sheet ("PFS"), medical authorization, and supporting documents.

**PLAINTIFFS' ACTIONS SHOULD NOT BE DISMISSED WITH PREJUDICE**

Plaintiffs have yet to return the documents set forth by this Court's PTO 14. Plaintiffs are aware of obligations regarding completing and serving PFS, medical authorization, and supporting documents, pursuant to PTO 14. However, to be precise, the undersigned counsel is without any knowledge of circumstances that may preclude Plaintiffs from responding to the counsel's contact attempts and efforts or completing the Court mandated PFS and medical

authorization. The undersigned counsel attempted to reach Plaintiffs numerous times including but not limited to the following:

**A. Plaintiff Wilma Fraley**

- October 1, 2016 – Mailed PFS and medical authorization;
- December 6, 2016 – Called Ms. Fraley but all phone numbers were out of service and sent an email re: return of PFS;
- December 7, 2016 – Sent a letter re: return of PFS;
- December 13, 2016 – Attempted to call Ms. Fraley, but her phones numbers were still out of service;
- December 19, 2016 – Sent an email re: return of PFS;
- January 9, 2017 – Sent a letter re: contact the undersigned counsel's office upon receipt of the letter;
- January 10, 2017 – Performed Westlaw search for any alternative contact information;
- January 19, 2017 – Sent a letter re: return of PFS; and
- May 11, 2017 – Sent a letter re: Motion to Dismiss with prejudice.

**B. Plaintiff Steven Wilburn**

- October 1, 2016 – Mailed PFS and medical authorization;
- December 6, 2016 – Left a voicemail and sent an email re: return of PFS;
- December 7, 2016 – Sent a letter re: return of PFS;
- December 19, 2016 – Left a voicemail and sent an email re: return of PFS;
- January 9, 2017 – Sent a letter re: contact the undersigned counsel's office upon receipt of the letter;

- January 10, 2017 – Performed Westlaw search for any alternative contact information;
- January 19, 2017 – Sent a letter re: return of PFS; and
- May 11, 2017 – Sent a letter re: Motion to Dismiss with prejudice.

**C. Plaintiff Leroy DePriest**

- November 14, 2016 – Mailed PFS and medical authorization;
- December 6, 2016 – Mr. DePriest informed the undersigned counsel that he will return his PFS and medical authorization;
- December 13, 2016 – Left a voicemail and sent an email re: return of PFS;
- December 19, 2016 – Left a voicemail and sent an email re: return of PFS;
- January 4, 2017 – Sent a letter re: contact the undersigned counsel's office upon receipt of the letter;
- January 19, 2017 – Sent a letter re: return of PFS;
- February 14, 2017 – Mr. DePriest informed the undersigned counsel that he cannot comply with PTO 14 at the moment;
- March 7, 2017 – Mr. DePriest informed the undersigned counsel that he will return a completed PFS and medical authorization;
- March 13, 2017 – Sent an email re: return of PFS;
- March 20, 2017 – Left a voicemail re: return of PFS;
- May 9, 2017 – Mr. DePriest informed the undersigned counsel that he will return a completed PFS and medical authorization in the upcoming days;
- May 11, 2017 – Sent a letter re: Motion to Dismiss with prejudice; and

- May 17, 2017 – Mr. DePriest informed the undersigned counsel that he will return a completed PFS and medical authorization, and he is aware that Defendants are seeking dismissal of his action.

In light of the foregoing, the undersigned counsel respectfully seeks a 120-day extension on PTO 14. Nevertheless, if the Court deems dismissal of Plaintiffs' actions to be proper, then they should be dismissed without prejudice granting an opportunity for Plaintiffs to reinstate their actions.

DATED: May 31, 2017

Respectfully submitted,

**BERNSTEIN LIEBHARD LLP**

By: /s/ Daniel C. Burke

Daniel C. Burke  
10 E. 40th Street  
New York, NY 10016  
Telephone: (212) 779-1414  
Facsimile: (212) 779-3218  
Email: dburke@bernlieb.com  
Email: dlee@bernlieb.com

*Attorneys for Plaintiffs*